

## RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

WHEREAS, under the current Land Use Ordinance ("LUO"), transient vacation units ("TVUs") are permitted as of right in the Resort District and the Resort Mixed Use Precinct of the Waikiki Special District. TVUs are also permitted in the A-2 Medium Density District if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres and the Resort District and the A-2 District were rezoned pursuant to the same zone change application as part of a master-planned resort community. TVUs are not allowed in any other zoning district; and

WHEREAS, Ordinance 89-154 established provisions that allowed TVUs located in zoning districts where they were no longer allowed to continue in operation if they were in existence prior to certain preceding dates and obtained a nonconforming use certificate ("NUC"); and

WHEREAS, Ordinance 89-154 prohibited new bed and breakfast homes ("B&Bs") in all zoning districts, but allowed existing B&Bs to continue in operation if they were in existence prior to certain preceding dates and obtained an NUC; and

WHEREAS, certain residential areas on Oahu have had long-term problems with illegal TVU or B&B operations, resulting in complaints to the City about noise, illegal parking, and other problems associated with such operations; and

WHEREAS, enforcement efforts against illegal TVU and B&B operations have proven to be difficult because City officials must confirm that a renter is staying for less than the legal minimum 30-day rental term; and

WHEREAS, the Council therefore desires to propose amendments to the LUO relating to TVUs and B&Bs to facilitate enforcement efforts and revise associated nonconforming use certificate provisions; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2000 Edition), as amended ("Charter"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 17-164

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**RESOLUTION**

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WHEREAS, the term "zoning ordinances," as used in Charter Section 6-1513, includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, Chapter 2, Article 24, Revised Ordinances of Honolulu 1990 ("ROH"), establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Charter Section 6-1513, and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (the "Land Use Ordinance"), attached hereto as Exhibit A, in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 17-164

**RESOLUTION**

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

*[Handwritten signature]*  
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DATE OF INTRODUCTION:

**MAY 25 2017**

\_\_\_\_\_  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

12:51 PM 5/18/2017  
CITY OF HONOLULU  
CLERK OF THE CITY

## EXHIBIT A



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL \_\_\_\_\_

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**A BILL FOR AN ORDINANCE**

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RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance relating to transient vacation units and bed and breakfast homes.

SECTION 2. Section 21-2.150-2, Revised Ordinances of Honolulu 1990 ("Administrative enforcement"), is amended by adding a new subsection (e) to read as follows:

"(e) Where the director, pursuant to subsection (d), has instituted a civil action in any court of competent jurisdiction to enforce the civil fine imposed by any order issued pursuant to this section, all costs of enforcement, including legal costs and attorneys' fees, may be reduced to a judgment or recorded as a lien against the property on which such enforcement occurs. A lien recorded against the property that is registered in the bureau of conveyances or land court is enforceable in the same manner as any mortgage or other lien on real property. The interest secured by the city lien is senior to any lien recorded or registered after the city lien is recorded and subordinate to any lien recorded prior to the city lien."

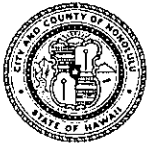
SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

**"Sec. 21-2.150-3    Advertisements for transient vacation units or bed and breakfast homes.**

(a) Advertisements.

(1) For the purposes of this section:

(A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner of a transient vacation unit or bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and



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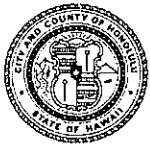
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**A BILL FOR AN ORDINANCE**

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- (B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit or bed and breakfast home owned by another person.
- (2) Information required: The owner, operator, or proprietor of any transient vacation unit or bed and breakfast home, and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the following information:
- (A) For a transient vacation unit or bed and breakfast home for which a nonconforming use certificate is required, the nonconforming use certificate number and street address, including, if applicable, any apartment unit number, for the transient vacation unit or bed and breakfast home.
- (B) For a transient vacation unit that does not require a nonconforming use certificate and is a permitted use in the resort district, the Waikiki Special District resort mixed use precinct, or the A-2 medium density apartment district pursuant to Section 21-5.640(a), the street address, including, if applicable, any apartment unit number, for the transient vacation unit.
- (3) Prima facie evidence. The existence of an advertisement for a transient vacation unit or bed and breakfast home will be prima facie evidence of the following:
- (A) That the owner of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business address, or service mark of the rental agent; and
- (B) That a transient vacation unit or bed and breakfast home, as applicable, is being operated at the listed address.

The burden of proof shall be on the owner to establish otherwise with respect to the advertisement and that the subject property either is not being used as a transient vacation unit or bed and breakfast home, or that it is being used legally for such purpose.



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- (b) If any advertisement does not have the information required by subsection (a), the owner or the rental agent of the transient vacation unit or bed and breakfast home being advertised shall, within seven business days of receiving a notice of violation, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving a notice of violation, take action to cure the violation. Failure to do so will subject the owner or rental agent to the civil fines provided in subsection (d).
- (c) Any person violating this section is subject to the following civil fines:
- (1) For a first violation, an initial fine of \$5,000, and daily fines of \$5,000 per day until the violation is corrected;
  - (2) For a second violation occurring within a twelve-month period, a fine of \$7,500, and daily fines of \$7,500 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same section occurs; and
  - (3) For a third violation occurring within a twelve-month period, an initial fine of \$10,000, and daily fines of \$10,000 per day until the violation is corrected.
- Nothing in this subsection precludes the department from seeking any other remedy against a violator of this section.
- (d) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 apply to the administrative enforcement for violations of this section."

SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-4 to read as follows:

**"Sec. 21-2.150-4      Depository of fees and civil penalties relating to transient vacation units or bed and breakfast homes.**

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to transient vacation units or bed and breakfast homes are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used for expenses related to the regulation of such uses by the department."







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~~continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~

- ~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.~~
- ~~(d)] The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate [in accordance with the following schedule:~~
- ~~(1) between September 1, 2000 and October 15, 2000; then~~
- ~~(2) between September 1 and October 15 of every even-numbered year thereafter.] no later than September 30 of each year. Each application to renew [shall] must include proof that: [(i) there]~~
- (1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year; and [that (ii) there]
- (2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy.

If the applicant does not reside on Oahu, the application must include the name, address, and phone number of an on-island licensed agent for receipt of any notices or complaints. Applicants shall keep their licensed agent information current with the department. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[-], except where the applicant establishes good cause for failing to meet conditions.



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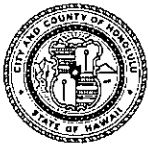
of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 35 days of transient occupancies [shall] will be effective on January 1, 1995 and [shall] applies to renewal applications submitted on or after January 1, 1996.

[(e)](c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.

(d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Section 21-2.150-3, relating to advertisements for transient vacation units.

(e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a transient vacation unit pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:

- (1) The creation, modification, or release of a lien or encumbrance;
- (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
- (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
- (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or



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- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 7. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-4.110-2 [Bed and breakfast homes—] Nonconforming use certificates for bed and breakfast homes.**

- (a) The purpose of this section is to prohibit bed and breakfast homes, while permitting certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989 to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid and current nonconforming use certificate pursuant to this section on the effective date of this ordinance.
- (b) ~~[The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.~~
- (d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate ~~[in accordance with the following schedule:~~



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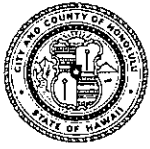
- (1) ~~between September 1, 2000 and October 15, 2000; then~~
- (2) ~~between September 1 and October 15 of every even-numbered year thereafter.] no later than September 30 of each year.~~ Each application to renew ~~[shall]~~ must include proof that: ~~[(i) there]~~
- (1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year; and ~~[that (ii) there]~~
- (2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy.

Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate~~[-]~~, except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 28 days of bed and breakfast occupancies ~~[shall]~~ will be effective on January 1, 1995 and ~~[shall apply]~~ applies to renewal applications submitted on or after January 1, 1996.

~~[(e) Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~

~~(f)~~(c) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

- (1) Detached dwellings used as bed and breakfast homes ~~[shall]~~ must be occupied by a family and ~~[shall not]~~ cannot be used as a group living facility. Rooming ~~[shall]~~ is not ~~[be]~~ permitted in bed and breakfast homes.



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- (2) No more than two guest rooms ~~[shall]~~ may be rented to guests, and ~~[the]~~ a maximum ~~[number]~~ of four guests are permitted within the bed and breakfast home at any one time ~~[shall be four]~~.
- (3) ~~[There shall be no exterior]~~ Exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home is prohibited.
- (4) One off-street parking space ~~[shall]~~ must be provided for each guest room, in addition to the required spaces for the dwelling unit.
- ~~[(g)]~~(d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.
- (e) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Section 21-2.150-3, relating to advertisements for bed and breakfast homes.
- (f) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a bed and breakfast home pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
  - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
  - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
  - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or



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- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 8. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-5.640 Time sharing and transient vacation units.**

- (a) Time sharing and transient vacation units ~~[shall be]~~ are permitted in the A-2 medium density apartment zoning district provided:
- ~~[(a)]~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- ~~[(b)]~~(2) The resort district and the A-2 district ~~[shall]~~ have been rezoned pursuant to the same zone change application as part of a master-planned resort community.
- (b) This subsection applies to any transient vacation unit subject to subsection (a), or located in the resort district or the resort mixed use precinct of the Waikiki special district. The owner, operator, or proprietor of the transient vacation unit, and any rental agent thereof, shall comply with the provisions of Section 21-2.150-3, relating to advertisements for transient vacation units."



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**A BILL FOR AN ORDINANCE**

SECTION 9. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "transient vacation units" use or structure entry and the explanatory notes following the table to read as follows:

<b>"Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures"</b>			
<b>Use or Structure</b>	<b>Precinct</b>		
	<b>Apartment</b>	<b>Resort Mixed Use</b>	<b>Public</b>
Transient vacation units		[P] <u>P/c</u>	

**Ministerial uses:**

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P/c = Permitted use subject to standards in Article 5
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct

**Discretionary uses:**

- Cm = Requires an approved Conditional Use Permit - minor subject to standards in Article 5; no public hearing required
- C = Requires an approved Conditional Use Permit - major subject to standards in Article 5; public hearing required

**Other:**

- N/A = Not applicable as a land use category in that precinct, since it is already regulated under another land use category.

**Note:** An empty cell in the above matrix indicates that use or structure is not permitted in that precinct.

<sup>1</sup> Provided a solid wall 6 feet in height [shall] must be erected and maintained on any side or rear boundary adjoining the apartment precinct.

<sup>2</sup> Provided that where these uses are integrated with other uses, pedestrian access [shall] must be independent from the other uses, and [no] the building floor [shall] cannot be used for both dwelling and commercial purposes."



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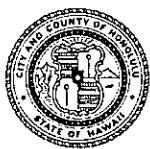
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**A BILL FOR AN ORDINANCE**

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SECTION 10. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.





**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
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SECTION 11. This ordinance takes effect upon its approval.

INTRODUCED BY:

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DATE OF INTRODUCTION:

\_\_\_\_\_  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor  
City and County of Honolulu

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

**RESOLUTION 17-164**

Introduced: 05/25/17 By: ERNEST MARTIN

Committee: ZONING AND HOUSING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

Voting Legend: \* = Aye w/Reservations

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10/26/17	ZONING AND HOUSING	CR-407 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
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11/01/17	COUNCIL	CR-407 AND RESOLUTION 17-164 WERE ADOPTED. 8 AYES: ANDERSON, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 NO: ELEFANTE.
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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
\_\_\_\_\_  
GLEN I. TAKAHASHI, CITY CLERK

  
\_\_\_\_\_  
RON MENOR, CHAIR AND PRESIDING OFFICER